



# Attachment A STANDARD TERMS AND CONDITIONS FOR FIRM-FIXED PRICE PURCHASE ORDERS

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# STANDARD TERMS AND CONDITIONS FOR FIRM-FIXED PRICE PURCHASE ORDERS

The following clauses apply, as printed, to this contract, except to the extent they are specifically deleted, supplemented, or amended in the Schedule of the Purchase Order.

## 1. DEFINITIONS

For the purpose of this Subcontract / Purchase Order, the following definitions shall apply.

- A. "*Purchase Order*" shall mean the terms and conditions stated herein and on the face of Buyer's Purchase Order form in which this Form P-125 (24 January 2001) is referenced as well as all schedules, blueprints, specifications and other documents referred to in said terms and conditions or said Purchase Order.
- B. "*Buyer*" shall mean Rantec Microwave Systems, Inc.
- C. "*Seller*" shall mean the individual, partnership, corporation, organization, or association contracting with Buyer to provide the Item(s) defined in this Purchase Order.
- D. "*Subcontractor*" shall mean any individual, partnership, corporation, organization, or association contracting with Seller to provide any Item(s) defined in this Purchase Order or any part thereof. "*Subcontract*" means Purchase Orders placed by Seller under this Purchase Order.
- E. "*Government*" shall mean the United States Government, including any department or agency thereof.
- F. "*Item(s)*" shall mean any service, work, hardware, component, part end item, supply, product or data identified in this Purchase Order to be supplied by Seller to Buyer.
- G. "*Prime Contract*" shall mean the Government Contract (identified in this order) under which this Purchase Order is issued.
- H. "*Technical Data*" shall mean recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs; text specifications or related performance or design type documents; in machine forms such as punched cards, magnetic tape, computer memory printouts; or may be retained in computer memory. Examples of Technical Data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. Technical Data does not include financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.
- I. "*Limited Rights*" shall mean rights to use, duplicate or disclose Technical Data, in whole or in part, by or for the Buyer, with the express limitation that such Technical Data, shall not, without the written permission of the Seller be (1) released or disclosed in whole or in part outside the Buyer, (2) used in whole or in part by the Buyer for manufacture; or (3) used by a party other than the Buyer except for:

(a) emergency repair or overhaul work only, by or for the Buyer, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Buyer shall be made subject to a prohibition against further use, release or disclosure; or

(b) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (a) above.

J. "*Unlimited Rights*" shall mean rights to use, duplicate or disclose Technical Data, in whole or in part, in any manner and for any purpose, and to have or permit others to do so.

K. "*Acceptance*", when used in connection with acceptance by Buyer of Item(s) as complying with Purchase Order requirements, shall mean final acceptance by Buyer as described in Clause 7 of these Terms and Conditions.

## 2. ACCEPTANCE

This Purchase Order constitutes Buyer's offer to Seller upon terms and conditions stated in this Purchase Order, and it does not constitute an acceptance by Buyer of any offer to sell. Any reference in this Purchase Order to Seller's quotation or proposal does not imply acceptance of any terms or conditions in that quotation or proposal. This Purchase Order shall become a binding contract when it is accepted either by Seller's acknowledgment or performance.

This Purchase Order expressly limits acceptance to the terms and conditions stated in the Purchase Order. Any additional or different terms or conditions proposed by the Seller shall be of no effect nor under any circumstances be binding. Upon acceptance, this Purchase Order shall constitute the entire agreement between Buyer and Seller and shall supersede all previous communications, either written or oral, with respect to the subject matter of this Purchase Order.

Unless otherwise stated herein, this Purchase Order may not be altered or modified except in writing, duly executed by an authorized representative of Buyer and Seller.

## 3. DEBARMENT—SUSPENSION CERTIFICATION

"Seller hereby certifies that it is not listed by any Federal Agency as debarred, suspended or otherwise ineligible for any Government programs." In the event Seller's status changes during the performance of this Purchase Order, Seller shall immediately notify Buyer in writing of this change.

## 4. CONDITIONS INCORPORATED BY REFERENCE

A. The provisions of the Federal Acquisition Regulation (FAR) and DOD FAR Supplement (DFARS) set forth in subparagraph C below, are hereby incorporated by reference in this Purchase Order if this Purchase Order is entered into under a Prime Contract. Seller's obligations to Buyer under this Purchase Order shall be deemed to be consistent with and in aid of the obligations of Buyer to the Government under the Prime Contract as provided in the clauses.

Whenever the incorporated Government clauses provide for the settlement of disputes in accordance with the "*Disputes*" clause, however, the dispute shall be resolved in accordance with the clause of this Purchase Order entitled "*Applicable Law and Disputes: Sponsored Appeals.*" Provisions of the FAR and DFARS referenced in subparagraph C below shall be those versions incorporated into the Prime Contract under which the Item(s) in question are ordered. If there is a conflict or addition to the FAR or DFARS in effect or incorporated by reference on the effective date of this Purchase Order and the FAR or DFARS provisions of the then relevant Prime Contract, the Prime Contract FAR or DFARS shall govern.

B. Wherever necessary to make the context of the FAR and DFARS clauses set forth below applicable to this Purchase Order, the term "*Contractor*" shall mean Seller, the term "*Contract*" shall mean this Purchase Order, and the terms "*Government*", "*Contracting Officer*", and equivalent phrases shall mean Buyer, except the term "*Government*" shall not change in the phrases "*Government Furnished Property*", "*Government Property*", "*Governmental Installation*", or anywhere in the FAR and DFARS clauses set forth below in subparagraph C(1).

C.(1)

- FAR 52.203-6            Restriction on Subcontractor Sales to the Government
- FAR 52.245-1           Government Property
- FAR 52.245-17        Special Tooling
- FAR 52-245-18        Special Test Equipment (list of equipment must be provided to Buyer)
  
- FAR 52.203-3           Gratuities
  
- FAR 52.211-5           Material Requirements
- FAR 52.211-15        Defense Priority and Allocation Requirements
- FAR 52.219-8           Utilization of Small Business Concerns
- FAR 52.222-21        Prohibition of Segregated Facilities (applies when subcontract is subject to 52.222-26 Equal Opportunity)
- FAR 52.222-22        Previous Contracts and Compliance Reports (applies when subcontract is subject to 52.222-26 Equal Opportunity)
- FAR 52.222-26        Equal Opportunity (unless exempt, in which case, use Alt. I)
- FAR 52.222-27        Affirmative Action compliance requirements for construction (to be included in each Purchase Order of \$10,000 or more)
- FAR 52.222-35        Affirmative Action for Special Disabled and Vietnam Era Veterans (to be included in each Purchase Order of \$10,000 or more)
- FAR 52.222.36        Affirmative Action for Handicapped Workers (to be included in each Purchase Order that exceeds \$2,500 unless exempted)
- FAR 52.222-37        Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (to be included in each Purchase Order of \$10,000 or more)
- FAR 52.223-3           Hazardous Material Identification and Material Safety Data
- FAR 52.224-2           Privacy Act
- DFARS 252.225-7001   Buy American Act and Balance of Payments Program
- DFARS 252.225-7012   Preference for Certain Domestic Commodities

## 5. ORDER OF PRECEDENCE

In the event of an inconsistency in this Purchase Order, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (1) the Terms and Conditions on the face of the Purchase Order, (2) the specification, (3) drawings, samples, etc., (4) Statement of Work, and (5) the Standard Terms and Conditions (Form P-125, 24 May 2020).

## 6. CHANGES

Buyer may at any time, by written notice to the Seller, and without notice to any sureties, make any change to the Purchase Order. If the Seller can show, as set forth below, that such changes cause an increase or decrease in the cost or delivery schedule, the Buyer shall make an equitable adjustment in the Purchase Order price, the delivery schedule, or both, and shall modify the Purchase Order in writing. In such conditions the Seller must submit a proposal for adjustment within thirty (30) days of Seller's receipt of said written notice. However, the Buyer may receive and act upon the Seller's proposal at any time before final payment of the Purchase Order. If the Seller's proposal includes the cost of property made obsolete or excess by said change, the Buyer shall have the right to prescribe the manner of the disposition of such property. If the Buyer and Seller fail to agree to any adjustment, the Seller shall proceed with the performance of the Purchase Order as it has been changed by the Buyer. Failure to agree to any adjustment shall be a "dispute" for purposes in Article 24 of this Purchase Order. When the Buyer and Seller have agreed to an adjustment, the Purchase Order shall be modified to reflect such agreement by a writing executed by a representative of Buyer's Procurement Department and a representative of Seller. Such modification shall constitute final agreement and total consideration for such change.

## 7. INSPECTION, ACCEPTANCE, AND APPROVALS

All items to be delivered under this Purchase Order shall, at all times and places, including the period of manufacture, be subject to inspection and test by Buyer and the Government. Buyer and Government shall have access to all areas of Seller's premises in which work on this Purchase Order is being performed. Seller shall require its Subcontractors to provide the Buyer and the Government similar access to all areas of the premises of such Subcontractors in which work on this Purchase Order is being performed; and in connection therewith, Seller and Seller's Subcontractors shall provide all reasonable assistance to Buyer and the Government. Seller shall prepare records evidencing all inspections made. Such records shall be kept complete and made available to the Government and Rantec during contract performance and for a minimum of 4 years unless the Purchase Order requires another time period. Buyer will accept or give notice to Seller of rejection of Item(s) delivered under this Purchase Order within a reasonable time after receipt of Item(s). Buyer may, at its option, require prompt replacement or correction of rejected Item(s) at Seller's expense and deduct the cost thereof from any sum due Seller or make an equitable reduction in the price of this Purchase Order for the cost of repairing or replacing the rejected Item(s).

The return to Seller of any rejected Item(s) and delivery to Buyer of any corrected or replaced Item(s) shall be at Seller's risk of loss and expense. Seller shall also reimburse Buyer, or at Buyer's option, Buyer shall reduce the price of the Purchase Order or deduct from sums otherwise due Seller, for all costs incurred by Buyer in connection with Buyer's receiving, inspection and

acceptance of said corrected or replaced Item(s) and in connection with Buyer's handling, repacking and storage of rejected Item(s). Seller shall not resubmit rejected Item(s) to Buyer without prior written approval and instructions from Buyer. Seller shall identify resubmitted Item(s) as Item(s) having been previously rejected by the Buyer. Seller shall provide and maintain a quality assurance and control system acceptable to Buyer and the Government.

## 8. WARRANTY

Seller warrants that each Item(s) ordered to specification will conform thereto and to any drawings, samples or other description furnished or adopted by Buyer, or, if not ordered to specification, will be fit and sufficient for the purpose intended. Seller also warrants that each Item(s) is merchantable, of good material and workmanship, and free from defects. Such warranties, together with Seller's service warranties and guarantees shall survive inspection, test, acceptance of, and payment for the Item(s) and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate and joint users. Such warranties shall continue in effect for one (1) year after the Item(s) accepted by the ultimate user; and such warranties shall in any event expire three (3) years after the Item(s) is accepted by Buyer. At Buyer's option, defective or nonconforming Item(s) may be (i) returned to Seller for credit, or (ii) require prompt correction or replacement of Item(s) by Seller, or (iii) have the Item(s) corrected or replaced at Seller's expense and deduct any cost from any amount due Seller or otherwise obtain reimbursement from Seller. Seller shall bear the risk of loss and expense of Item(s) returned and subsequent delivery of corrected or replaced Item(s). Such Item(s) shall not be corrected or replaced without Buyer's written authorization. Item(s) corrected or replaced pursuant to this Clause shall be subject to provisions of this Clause and the Clause entitled "*Inspection, Acceptance and Approvals*" in the same manner and to the same extent as Item(s) originally delivered under this Purchase Order.

## 9. ANTI-KICKBACK ACT

A. This Contract is subject to the provisions of the Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the "*Act*") and FAR 52.203-7, Anti-Kickback Procedures. FAR 52.203-7 is incorporated by reference appropriately modified to reflect that the term Contractor shall mean Seller. By accepting this Purchase Order, Seller certifies that neither Seller, nor Seller's employees, agents, representatives, nor any person acting on behalf of Seller has engaged in conduct prohibited by the Act relating to the Prime Contract, this Purchase Order or any subcontract thereunder. Seller hereby indemnifies, defends and holds harmless Buyer, its officers, employees and agents from any and all losses, costs, fees and damages resulting, directly or indirectly, in whole or in part, from any conduct in which Seller or Seller's employees, agents or representatives have engaged and which is prohibited by the Act.

B. Buyer shall have the right to withhold from any sums due Seller under this Purchase Order:

- (1) If so directed by the cognizant Contracting Officer pursuant to the terms of the Act or pursuant to FAR 52.203-7; or
- (2) To recoup losses, costs, fees, damages against the incurrence of which Seller has agreed to indemnify Buyer.

C. Seller agrees to incorporate FAR 52.203-7, Anti-Kickback Procedures in all subcontracts under this Purchase Order.

## 10. INVOICES

Seller shall submit invoices in three (1) copies for each shipment  
*Standard Terms and Conditions for Firm-Fixed Price Purchase Orders*  
Rantec Microwave Systems, Inc.

to Buyer. Federal, state and local taxes shall be shown separately on the invoices where they are applicable. Prepaid transportation charges shown on the invoices must be supported by the original copy of the freight bill. Invoice shall reference this Purchase Order number and the line item against which the costs have been incurred.

Payment shall be deemed made, for the purposes of discount periods, on the date Buyer's payment is mailed to Seller. Unless freight and other charges are itemized, any discount will be taken on the full amount of the invoice.

#### **11. PAYMENT**

Payment due dates, including discount periods, will be computed from either (i) the date of Buyer's receipt and acceptance, whether provisional or final, of the Item(s) or (ii) the date of Buyer's receipt of the correct invoice (whichever is later). The price or prices in this Purchase Order include all applicable federal, state and local taxes and will not be changed as the result of failure by Seller to include any applicable tax or any increase in Seller's tax liability. In the event taxes are repealed or rates reduced, the Purchase Order price shall be reduced accordingly. Seller represents and warrants that the prices in this Purchase Order do not exceed those currently charged by Seller to any other customer purchasing the same Item(s) under similar circumstances in like quantities. In the event it is determined that the prices in this Purchase Order do exceed those currently charged by Seller to any other customer purchasing the same item(s) under similar circumstances in like quantities, the Purchase Order shall be reduced accordingly. In the event progress payments are authorized in this Purchase Order, costs must be invoiced in accordance with Clause 23, "*Progress Payments.*" Payment for any Item(s) shall not constitute approval or acceptance of such Item(s) by Buyer, and Buyer's right of inspection shall survive payment.

Notwithstanding any other provisions herein, Rantec has the right, without loss of discount privileges, to pay invoices covering supplies shipped in advance of the schedule on the normal maturity after the date specified for delivery.

#### **12. SHIPMENTS**

Shipments and/or deliveries of Item(s) shall be made by Seller in accordance with quantities and delivery schedule specified in this Purchase Order. If at any time it appears Seller will not meet schedule, Seller shall promptly notify Buyer in writing; and, if requested by Buyer, ship by air or expedited routing to avoid or minimize delay. The added cost of shipping by air or expedited routing shall be borne by Seller. Buyer expressly retains all other rights or remedies provided by law for any breach of this Clause by Seller, and no action by Seller, and no action by Buyer shall constitute a waiver of any such right or remedy. Rantec also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Rantec's orders or in advance of required schedules, or to defer payment on early deliveries until the scheduled delivery date.

#### **13. SHIPMENTS IN EXCESS OF REQUIRED QUANTITIES**

Seller is not authorized to ship Item(s) in excess of the quantities required in this Purchase Order. In the event Seller does ship quantities in excess of the quantities stipulated in this Purchase Order, Seller shall, within two days of such over shipment, notify Buyer and provide Buyer with written disposition instructions and full reimbursement for the costs of returning Item(s) (if requested), repacking (if requested), inspection, and accounting. Otherwise, Buyer shall have the absolute right, at no cost, to retain such

Item(s) and title to such Item(s) shall vest in Buyer.

#### **14. DELIVERY OF ITEMS**

Unless this Purchase Order directs otherwise, Seller shall deliver the Item(s) to the Buyer FOB Seller's plant. Seller shall sufficiently package the items to protect them during transportation and storage.

#### **15. BUYER-FURNISHED PROPERTY**

The Buyer may, at its option, furnish the Seller with materials or supplies or equipment which are required for the performance of this Purchase Order. If the Buyer-furnished property was not originally contemplated in this Purchase Order, there shall be an equitable reduction in the price of the Item(s) prior to delivery of such materials, supplies or equipment to the Seller, or as soon as possible thereafter. The Seller shall be responsible for integration of materials and supplies furnished to Seller in the Item(s) to be sold to Buyer under this Purchase Order. Seller shall keep all property furnished to it by Buyer segregated and clearly marked as the property of Buyer and will maintain complete inventory thereof. Seller assumes all risk of loss or damage to such property while in Seller's custody or control and will immediately notify Buyer of loss, destruction or damage to such property. Seller shall also be liable for all losses to Buyer as a result of Seller's failure to furnish timely notice to Buyer of loss, destruction or damage to Buyer's property suffered in transit or prior to receipt by Seller. At Buyer's direction, Seller will deliver said property, to the extent not incorporated in delivered Item(s), to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses.

If this Purchase Order includes special dies, molds, tools and/or patterns the price for which is stated separately in this Purchase Order, such dies, molds, tools or patterns shall become the property of Buyer at the time that Seller manufactures them or obtains them. While such dies, molds, tools or patterns are in the custody or control of Seller, Seller shall maintain them in good condition at Seller's expense, Seller shall hold them at Seller's risk of loss or damage, and Seller shall not use them in connection with the production, manufacture, assembly or design of any item(s) other than the Item(s) of this Purchase Order. Seller shall return all such dies, molds, tools or patterns to Buyer upon Buyer's written request.

In the event of such a request, Seller shall deliver all such dies, molds, tools or patterns to Buyer FOB. Seller's plant and in the same conditions as originally produced and/or obtained by Seller, reasonable wear and tear excepted. Seller will immediately notify Buyer of loss, destruction or damage to any such dies, molds, tools or patterns. Notwithstanding the restrictions against use and disclosure contained herein, upon prior written notice to Buyer and to the extent such use will not interfere with Seller's performance of Purchase Orders with Buyer in effect at the time, Seller with the U.S. Government's authorization, may use on other contracts, all Buyer-furnished designs, drawings, special tooling, equipment, material, engineering data or other technical or proprietary information, etc., which the U.S. Government owns, or has the right to authorize the use thereof.

#### **16. BUYER'S RIGHTS IN INFORMATION**

Buyer shall retain all rights in Technical Data furnished to Seller. All Technical Data or other information furnished by Buyer to Seller (in this Clause 16 such Technical Data and such other information shall be called "*Information*") shall remain the sole property of Buyer. Despite completion, conclusion, expiration or termination of this Purchase Order, Seller shall, except as otherwise provided in this Purchase Order, (i) hold in confidence and prevent disclosure of Information and (ii) not reproduce said

Information and (iii) not use said Information except in the performance of this Purchase Order.

Seller shall be fully responsible for the care and protection of all Information until it is returned to Buyer. Seller shall return all such Information to Buyer upon Buyer's request and, in any event, upon completion of all work required, or the termination, cancellation or expiration of this Purchase Order. Seller may use such Information in connection with the manufacture of articles, products or things for direct sale by Seller to the Government to the extent the Government has the right to authorize such use by Seller and subject to these provisions and provided Seller shall (i) give Buyer prior written notice of each such proposed use, (ii) prominently identify, to the extent possible, each article, product or thing as being manufactured by Seller in the performance of orders for the Government, and (iii) make no claim against Buyer which arises out of use by Seller of such Information. Where Buyer's Information is furnished to Seller's suppliers for use in the performance of this Purchase Order, Seller shall insert the substance of this Clause in its orders to such suppliers.

#### **17. CALIBRATION OF STANDARDS (GAGES, INSTRUMENTS AND TESTERS)**

Unless specific intervals are stated elsewhere in this Purchase Order, all standards pertinent to this Purchase Order shall be calibrated at least once per year at Seller's expense against laboratory standards established by the National Bureau of Standards of the United States.

#### **18. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY**

If Seller is responsible for the design of any of the Item(s) which are to be delivered under this contract, Seller agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against any expense, loss or liability for any actual or alleged infringement of any patent, trademark or copyright arising from or related to the use, sale, manufacture or disposal of such Item(s). Upon receipt of timely notice of any claim or suits alleging such infringement, Seller agrees to defend Buyer, its successors, assigns, customers, and users of its products at Seller's expense.

#### **19. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

A. If the Contracting Officer determines under Buyer's Prime Contract that any price negotiated in connection with, or any cost reimbursable under, the Prime Contract was increased by any significant sums because (i) Seller or any of its actual or prospective Subcontractors furnished cost or pricing data that were not complete, accurate and current as certified in the Seller's Certificate of Current Cost or Pricing Data, or (ii) Seller or any of its actual or prospective Subcontractors furnished data of any description that were not accurate, and if the Prime Contract price or any cost reimbursable under the Prime Contract shall be reduced by reason thereof, then the price negotiated in connection with this Purchase Order, including profit or fee, or any cost reimbursable hereunder, shall be reduced accordingly and this Purchase Order shall be modified in writing to reflect the reduction. After the reduction is made, any excess amount paid to Seller shall be promptly paid by Seller to Buyer upon demand.

B. In the event of a price reduction under subparagraph A above, Seller shall be bound by the determination of the Contracting Officer, provided that Buyer shall have promptly notified Seller of the decision of the Contracting Officer reducing Buyer's Prime Contract price, and if timely requested by Seller,

Buyer shall have appealed such decision in accordance with the "Applicable Law and Disputes; Sponsored Appeals" Clause 24 of this Purchase Order and shall have taken such further action as may be required under that Clause and this Clause 19.

C. In addition to the remedies provided in subparagraphs A and B above, Seller agrees to indemnify and hold harmless the Buyer from any increased charges Buyer may have to reimburse the United States Government or a higher tier contractor by reason of Seller's or any of Seller's subcontractors' failure to comply with any provision incorporated into this Purchase Order relating to cost or pricing data. Seller further agrees to indemnify the Buyer for any cost incurred by Buyer in defense of any defective pricing action brought by reason of Seller or Seller's subcontractors' defective pricing. Notwithstanding the foregoing, the Buyer shall have no obligation to justify the data submitted by Seller provided it gives Seller an opportunity to do the same directly with Buyer's customer.

#### **20. RIGHTS IN DATA AND INVENTIONS**

If this Purchase Order is issued under a Prime Contract, the Government's rights to Technical Data will be governed by the applicable FAR and DFARS clauses incorporated herein, provided all Technical Data to be delivered by the Seller to the Buyer under this Purchase Order other than with Unlimited Rights must be identified as such in the Purchase Order. All Technical Data not so identified shall be delivered to the Buyer with Unlimited Rights. Unless otherwise stated in this Purchase Order, Buyer shall have full rights to use Technical Data delivered by Seller hereunder for any purposes.

Buyer shall own all right, title and interest in and to all inventions conceived or first actually reduced to practice and all copyrightable works created in performance of any work under this Purchase Order.

#### **21. ACCOUNTS AND RECORDS**

Seller shall maintain accounts and records showing and supporting all costs incurred under this Purchase Order using generally accepted accounting principles and practices. If this Purchase Order is issued under a Prime Contract where Government requirements as to records and accounting are prescribed and are controlling, this Clause shall have no effect.

#### **22. INVENTORY CONTROL**

Seller will limit and phase expenditures, incurrence of costs, purchases and commitments for raw materials and components to ensure continuity of production and permit performance and completion of each production increment in sequence without creating any unreasonable accumulations of raw materials or components for any increment.

#### **23. PROGRESS PAYMENTS**

If the Buyer's Contract with Buyer's Customer, for which this subcontract is being entered, contains the Progress Payment clause found in FAR 52.232-16 then such clause shall be incorporated herein with the following modification:

- A. except as otherwise indicated below, the term "Contractor" shall mean the Seller, the term "Contract" shall mean this Purchase Order, and the terms "Government Contracting Officer", and equivalent phrases shall mean Buyer;
- B. in subparagraph (a), the term "Government" in the phrase "under Government contracts" shall mean the "Government";
- C. in subparagraph (b), the phrase "Clause" of this Purchase Order" shall be substituted for the phrase "of the Government clause";

- D. in subparagraph (c), the phrase "*on substantial evidence*" shall be deleted;
- E. in subparagraph (d), the term "*Government*" means the "*Government*" except in Item (2)(iv) of subparagraph (d) where "*Government*" shall mean "*Buyer*";
- F. in the first sentence of subparagraph (e), the term "*Government*" shall mean the "*Government*";
- G. in subparagraph (g) the term "*Contracting Officer*" shall be changed to "*Contracting Officer or Buyer*", and the term "*Government*" shall be changed to "*Government or Buyer*"; and
- H. subparagraph (j) shall be replaced with the following:
  - (j) The Seller shall not enter into any Subcontract or interdivisional order which contains a provision for progress payments unless the Buyer approves the terms of such provision.

#### 24. APPLICABLE LAW AND DISPUTES; SPONSORED APPEALS

- A. Any disputes arising under or in connection with this Purchase Order solely between Buyer and Seller which are not the subject of nor related to decisions issued by the Contracting Officer under the Prime Contract shall be governed by the laws of the State of California. Any litigation of such disputes, if commenced by Seller, shall be brought in a court of competent jurisdiction in the State of California.
- B. (1) If any dispute arising under or in connection with this Purchase Order is the subject of or relates to a decision issued by the Contracting Officer under Buyer's Prime Contract "*disputes*" clause, the decision, if binding upon Buyer, shall also be binding upon Seller. If Seller is affected by such decision and if Buyer elects not to appeal the decision or to institute an action, pursuant to the Contract Disputes Act of 1978 (the "*Disputes Act*"), Buyer shall notify the Seller promptly. After receipt of such notice, if Seller submits a timely request to Buyer to appeal the decision or to institute an action, Buyer shall do so. If Buyer appeals the decision or institutes an action, whether at its election or at Seller's request, any resulting decision, if binding upon Buyer under the Prime Contract, shall be binding upon Seller as it relates to this Purchase Order.
- (2) In the event an appeal or other Disputes Act action is taken or brought by Buyer, whether at Seller's request, Seller shall give its full cooperation to Buyer's prosecution thereof. Seller shall be afforded reasonable opportunity to participate in the prosecution of the appeal or action to the extent Seller's interest may be affected. To the extent requested by Buyer, Seller shall prosecute for Buyer and appeal for action taken or brought at Seller's request and, in such event, Buyer shall assist Seller in every reasonable manner. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal or suit taken or brought at Seller's request shall be paid by Seller. Buyer and Seller shall in good faith consult with and assist each other in dealing with the Contracting Officer or other cognizant representatives of the Government on issues raised which could or have ripened into a dispute under the Disputes Act to extent they may affect Seller's interest.
- (3) If as a result of any decision or judgment that is binding upon Buyer, Buyer is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund, credit, or pay to the Government any amount with respect to damages or any items of cost or fee

for which Buyer has paid Seller, Seller shall promptly repay any such amount to Buyer on demand.

- (4) The rights and obligations of this Clause shall survive final payment under this Purchase Order.
- (5) Seller shall indemnify and save Buyer harmless from any liabilities of any kind incurred by or imputed to Buyer under Contracts Disputes Act, Fraudulent Claims Section or other laws or associated regulations which may be applicable arising out of or resulting from any claim brought by Seller in the name of Buyer, if Seller is unable to support any part of his claim and it is determined that such liability is attributable to misrepresentation of fact or fraud on the part of the Seller. This provision shall not limit the remedies available to Buyer for the Seller's misrepresentation of fact or fraud but is in addition to any other remedies available pursuant to law, regulation and conditions of this Purchase Order.

C. Pending resolution of any dispute, Seller shall proceed with performance of this Purchase Order or as directed by Buyer in writing.

#### 25. TERMINATION FOR CONVENIENCE

The Buyer, by written notice, may terminate this Purchase Order at any time, in whole or in part, when it is in the Buyer's interest. Upon receipt of a notice of termination, Seller shall immediately proceed with the obligations set forth in FAR Part 49 including those in 49.104, unless otherwise directed by Buyer. For the purposes of this provision, the term "*Buyer*" shall replace the term "*TCO*" in FAR Part 49. Any compensation due Seller shall be governed by FAR Part 49 in effect on the effective date of the Prime Contract. The Buyer may deduct from any amount due Seller under this clause all unliquidated advance or other payments made to Seller under the terminated portion of the Purchase Order, any claim which the Buyer has or may bring against the Seller under or in connection with this Purchase Order, and other amounts described in FAR Part 49.204. For a partial termination, Seller shall submit any request for equitable price adjustment to Buyer within 45 days after the effective date of the termination. For a complete termination, Seller shall submit its final termination settlement proposal promptly, but in no event later than six months after the effective date of termination. The Seller shall maintain all records and documents relating to the terminated portion of this Purchase Order for three years after final settlement. This includes all books and other evidence bearing on the Seller's costs and expenses under this Purchase Order. The Seller shall make these records and documents available to the Government and/or the Buyer, at the Seller's offices, at all reasonable times, without any direct charge. Seller shall submit complete inventory schedules to Buyer, reflecting inventory that is allocable to the terminated portion of the Purchase Order as required by FAR 49.206-3 within 80 days from the effective date of the termination.

#### 26. TERMINATION FOR DEFAULT

- A. The Buyer may, subject to the provisions of subparagraph (c) below, by written notice to the Seller, terminate in whole or in part this Purchase Order in any one of the following circumstances:
  - (1) If the Seller fails to make delivery of the Item(s) as specified in the Purchase Order or an extension thereof; or
  - (2) If the Seller fails to perform any of the other provisions of this Purchase Order or so fails to make progress as to endanger performance of this Purchase Order, and in either of these two circumstances does not cure such failure

within a period of 7 days (or longer period as may be authorized in writing by Buyer) after receipt of notice from the Buyer such failure.

- B. In the event the Buyer terminates this Purchase Order in whole or in part as provided in Section A or F of this Clause 26 the Buyer may procure Item(s) similar to those so terminated, and the Seller shall be liable to the Buyer for any excess costs for such Item(s) provided that the Seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this Clause 26.
- C. Except with respect to defaults of Subcontractors, the Seller shall not be liable for the excess costs referred to above in section (b) at any tier, if the failure to perform the Purchase Order is beyond the control and without the fault or negligence of the Seller. Examples of which include acts of God, or of the public enemy, acts of Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. If failure to perform is caused by the default of a Subcontractor of Seller at any tier, and if such default is beyond the control of both Seller and Subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform unless, the material or labor to be furnished by Subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.
- D. If this Purchase Order is terminated as provided in this Clause 26, subparagraphs A or F, the Buyer, in addition to any other rights provided in this Agreement and under law, may require Seller to transfer title and deliver to the Buyer or the Government, in the manner and to the Buyer or the Government, in the manner and to the extent directed by Buyer, (i) any completed Item(s), and partially completed Item(s), and (ii) materials, parts, tools, dies, jigs, fixtures, plans, drawings, information documents and contract rights that the Seller has specifically produced or acquired for the performance of the part of this Purchase Order hereafter collectively called "*Manufacturing Materials*" in this Clause 26. The Seller shall protect and preserve property in the possession of Seller in which Buyer or Government has an interest.
- The Buyer shall pay the Seller for completed Item(s) delivered to and accepted by Buyer at the Purchase Order price less profit. Payment for partially completed Item(s) and Manufacturing Materials delivered to and accepted by the Buyer and, for the protection and preservation of property shall be an amount mutually agreed upon. The Buyer may withhold from amounts due the Seller for such sum as the Buyer determines to be necessary to protect the Buyer or the Government against loss because of outstanding liens, claims of former lien holders or otherwise resulting from Seller's default.
- E. If, after notice of termination of this Purchase Order under the provisions of this Clause 26, it is determined for any reason that the Seller was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Clause 24 of this Purchase Order.
- F. **Other Terminations.** If Seller files a petition in bankruptcy or for a receiver for all or any substantial portion of its property and assets, or if such petition shall be filed against it and shall not be dismissed within thirty (30) days from its filing, or if Seller shall make a general assignment for the benefit of its

creditors, or if Seller shall otherwise be subject to any bankruptcy type procedure affecting any substantial portion of its assets, Buyer shall have the right to terminate this Purchase Order for default by written notice to the Seller specifying the date of termination.

## 27. STOP WORK ORDERS

Buyer may, by written order, suspend all or part of the work to be performed under this Purchase Order for any period not to exceed ninety days. Upon receipt of the order, Seller shall immediately comply with its terms and take all reasonable steps to minimize costs allocable to work covered by the order during the period of work stoppage. Within the suspension period, or any extension thereof to which the parties may agree, Buyer shall either (a) cancel the suspension, or (b) terminate the work covered by the suspension in accordance with Clause 25 or Clause 26 this Purchase Order, as appropriate. Seller shall resume work whenever a suspension is canceled or expires. The Buyer shall make an equitable adjustment in the delivery schedule or Purchase Order price, or both, and the Purchase Order shall be modified if:

(a) the suspension results in a change in Seller's cost of performance or ability to meet the delivery schedule, and (b) Seller asserts a claim for adjustment within twenty days after the end of the suspension period.

## 28. LABOR DISPUTES

Whenever Seller has knowledge that any present or potential labor dispute is delaying or threatens to delay performance, Seller shall immediately notify Buyer including all relevant information, Seller agrees to insert the substance of this Clause 28, including this sentence, in any lower-tier Subcontract wherein a labor dispute might delay performance of this Purchase Order except that such lower-tier Subcontract shall provide that in the event performance is delayed or threatened by any actual or potential labor dispute, the lower-tier Subcontractor shall immediately notify Seller, including all relevant information.

## 29. RELEASES VOID

Buyer and the Government's representatives shall not be required to waive or release any rights in connection with any visits to Seller's premises or the premises of any of Seller's Subcontractor. Seller agrees that no such waiver or release shall be pleaded by Seller or any third persons in any action proceeding. Seller agrees to maintain adequate insurance to indemnify Buyer for any damages to Buyer's employees, officers, or agents visiting Seller's premises and further agrees to hold Buyer and/or the Government harmless for any damage to Seller or its premises that may result from Buyer's and/or the Government's employees, officers, or agents visiting the Seller's premises despite the fact such damage arose from acts of ordinary negligence of such officers, employees, or agents.

## 30. COPYRIGHT

Seller grants to Buyer an irrevocable, royalty-free, non-exclusive license to reproduce or otherwise use all copyrighted or copyrightable material furnished under this Purchase Order.

## 31. REMEDIES

The rights and remedies of the Buyer provided in this Purchase Order shall not be exclusive and are in addition to any other rights and remedies provided by law.

## 32. RELIANCE

Seller acknowledges that Seller is, and Buyer relies upon Seller as, an expert, fully competent in all phases involved in performance of this Purchase Order. In this context, Seller agrees that it will not deny any responsibility or obligation to Buyer on the grounds that



any such phase was originated or accomplished by Buyer. Seller shall be responsible for the Item(s) as though all phases were originated and accomplished by Seller. More specifically and without limiting the above, Buyer in originating, furnishing, or approving any specification, drawing, plan, changes, schedule or other document or part thereof, or any test part thereof, or any test report, or in releasing any Item(s) for production, neither accepts responsibility for, nor relieves Seller from the performance of all terms and conditions of this Purchase Order and related documents. Any such acts by Buyer acts shall not modify, impair, or abrogate any rights of Buyer under this Purchase Order.

### 33. PROPERTY RELEASE

The Buyer shall not be under any obligation to rehabilitate or restore or to pay the cost to rehabilitate or restore the Seller's plant or any portion thereof which is affected by abandonment or removal of any of the Buyer's and/or the Government's property.

### 34. INDEMNIFICATION PROVISIONS

A. This subparagraph A is applicable if the Seller or any of its employees, representatives, agents, or Subcontractors (hereinafter all are referred to collectively as "*Third Persons*") in this subparagraph A) perform work on the premises of Buyer.

Seller shall protect, defend, indemnify and hold Buyer harmless from any and all claims, expenses, liability and loss arising out of the performance of this Purchase Order by Third Persons; including employees of Seller, and based upon injury, death or damage to or destruction of property belonging to Buyer or its employees or to Seller or to Third Persons, while the Seller or Third Persons are on the premises of or traveling to or from the premises of Buyer unless Buyer's negligence is the proximate cause.

B. Seller agrees to protect, defend, hold harmless and indemnify Buyer from and against any and all liability and expense resulting from any alleged or claimed defect in Item(s) purchased hereunder, whether latent or patent, including allegedly improper construction and design, or from the failure of such Item(s) to comply with specifications or other provisions of this Purchase Order, or with any express or implied warranties of Seller or arising out of the alleged violation of any statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of such Item(s) including but not limited to the Federal Occupational Safety and Health Act of 1970, as amended. At Buyer's request, Seller shall obtain and maintain, during the life of this Purchase Order at its expense, product liability insurance, with a vendor's endorsement, in such form and amount and with such company as may be approved by Buyer in writing. Satisfactory evidence of such insurance shall be submitted to Buyer upon request.

### 35. DELAYS

In the event that Buyer elects not to terminate this Purchase Order pursuant to its rights under the Clause entitled "*Termination for Default*", Seller agrees that such election does not relieve Seller from liability for any damages that may inure to Buyer, and any assistance given by Buyer to Seller shall not release Seller from the faithful performance of this Purchase Order or result in any claim from Seller against Buyer.

### 36. SAFETY AND HEALTH

All Item(s) supplied under this Purchase Order shall be certified by the Seller to be in compliance with the requirements and standards of the Occupational Safety and Health Act of 1970 as amended.

In addition, where required, hazardous material data sheets will be supplied on all applicable Items(s). Failure of Buyer to contest a citation resulting from such noncompliance of such Item(s) will not relieve the Seller of liability under this Clause.

### 37. PACKING

All Item(s) are to be packed in suitable containers for protection during shipment and storage, and in accordance with Government or Buyer's specifications if applicable. Each container shall be marked with Buyer's Purchase Order number. Each container of a multiple container shipment shall be identified (I) to show the number of the container and the total number of containers in the shipment, and (ii) the number of the container in which the packing sheet has been enclosed. All shipments by Seller or his lower-tier subcontractors must include packing sheets containing Buyer's Purchase Order number, quantity, part number/size and description of the Item(s) shipped. Material for different Purchase Orders shall be listed on separate packing sheets. No separate or additional charge shall be imposed on or paid by Rantec for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in this Purchase Order.

### 38. UNIQUE GOODS

It is agreed between the parties that the Item(s) to be delivered under this Purchase Order are "*Unique Goods*" as set forth in 2-716 Uniform Commercial Code, 1962.

### 39. SHIPPING INSTRUCTIONS

Shipments must be made as specified in the Purchase Order unless subsequently stated otherwise in writing by Buyer.

### 40. COMPLIANCE WITH LAWS

In the performance of this Purchase Order, Seller shall comply with the provisions of all applicable federal, state and local laws, regulations, rules and ordinances from which liability may accrue to Buyer from any violation thereof by Seller.

### 41. ASSIGNMENTS

This Purchase Order, any portion of, any duty or right, or any claim arising from this Purchase Order shall not be assigned by Seller without the prior written consent of Buyer. This Purchase Order may not be assigned by operation of law or a merger or judicial sale or otherwise, without the prior written consent of Buyer. Any unauthorized assignment by Seller shall be a material breach of this Agreement.

### 42. PUBLICITY

The Seller shall not make either written or oral news releases, public announcements, denials, confirmations or disclosures of any information relating to this Purchase Order without the prior written consent of Buyer.

### 43. WAIVERS

Failure of Buyer to insist on performance of any of the terms, conditions or requirements of this Purchase Order shall not be construed as a waiver and shall not affect the right of Buyer to enforce each and every term, condition or requirement.

### 44. SERVICE OF PROCESS/JURISDICTION

Seller hereby appoints and designates the Secretary of the State of California as its agent to receive legal process and Seller hereby consents to "*in persona*" jurisdiction of the courts of the State of California.

### 45. SET-OFF

Any amounts owed to Rantec by Seller may be set-off against

amounts otherwise due to Seller from Rantec under this Purchase Order or otherwise.

**46. SEVERABILITY**

If any provision of this Purchase Order is subsequently held to be invalid, illegal, or unenforceable, that provision shall automatically be deleted from this Purchase Order. However, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

**47. ACCEPTANCE OF THIS PURCHASE ORDER**

Acceptance of this order is limited to the terms and conditions stated herein. Any additions, deletions, or differences in the terms proposed by the Seller are objected to and hereby rejected unless Rantec states otherwise in writing.

**48. WARRANTY OF PRICES**

Seller warrants that the unit price of each Item(s) covered hereby are the lowest currently (within the previous six months) charged by Seller to any other customer purchasing the same Item(s) in similar quantities under similar conditions. The Seller agrees to reimburse Rantec promptly the amount of the difference between the lower price charged to any other customer and the price charged Rantec hereunder.

**49. PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY**

Seller shall reimburse Buyer for any and all profit or fee amounts paid to or otherwise recovered by the Government or higher tier contractor pursuant to paragraph (C) of FAR 52.203-10 arising out of or resulting from any act or omission to act in violation or alleged violation of the Office of Federal Procurement Policy Act, as amended (41 USC 4123) as implemented in the FAR, by Seller, any Director, Officer, Employee, Agent, Representative, Consultant or Subcontractor at any tier of Seller. The term "*Prime Contractor*" as used in paragraph (C) or FAR 52.203-10 shall mean Buyer or higher tier contractor. The rights and remedies in this clause are not exclusive but are in addition to any other rights and remedies provided by law or under this Purchase Order.

**50. SUBCONTRACTING**

None of the work to be performed by Seller under this order shall be subcontracted without the prior written consent of Rantec. Material made in accordance with Rantec's specifications and drawings shall not be furnished or quoted to any other person or concern without Rantec's written consent.

**51. OZONE DEPLETING SUBSTANCES**

By commencing work under this Purchase Order, Seller hereby certifies that it will comply with the labeling requirements of 40 CFR Part 82 Protection of Stratospheric Ozone; Labeling established by the Environmental Protection Agency.

**52. CONFLICT MINERALS**

Seller recognizes, in relation to the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "*Act*"), the risks associated with sourcing "*Conflict Minerals*" (tin, tantalum, tungsten and gold) from the Democratic Republic of the Congo and adjoining countries. To the extent required herein, Seller commits to comply with the Act. If requested by the Buyer, Seller shall (1) complete the reasonable country of origin inquiry (RCOI) of Conflict Minerals; and (2) perform reasonable due diligence of its supply chain to determine if Conflict Minerals sourced from the DRC countries directly or indirectly support human rights violations. Seller shall take all other measures as are necessary to comply with the Act, its regulations and amendments, as applicable.

**NOTE:**  
7/11/13

Added Clause 52.